

## REMARKS

### Status of the claims

Claims 1-6, 8, 14-19, 21-26, 28, 34-37, 43-44 and 50-51 are pending in the application. Claims 2-6, 8, 14-19, 21-26, 28, 43-44, and 50-51 are withdrawn from consideration. Claims 1 and 34-37 are rejected.

Claim 1 has been amended. No new matter has been added.

### Claim amendments

Claim 1 has been amended to change "a container operably connected distally to the device having an opening therethrough adapted to deliver an abrasive material therein to the tissue or to collect ablated tissue or other biomolecule therein from an ablation site on the tissue" to "a container operably connected distally to the device having an opening therethrough adapted to deliver an abrasive material therein to the tissue and to collect ablated tissue or other biomolecule therein from an ablation site on the tissue." This intended to overcome the 35 U.S.C. §102 rejection.

### The 35 U.S.C. §102 rejection

Claim 1 is rejected under 35 U.S.C. §102(e) as being anticipated by *Unger et al.* (US 2002/0099356). The Applicants respectfully traverse this rejection.

The Examiner states that *Unger et al.* disclose a device comprising an actuator for driving an abrasive surface, a container adapted to deliver an abrasive material; a reservoir adapted to contain a pharmaceutical; and a permeable member. Furthermore, the Examiner states on page 3 of the Office Action that the claim makes it clear that the container can perform either the function of being adapted to deliver an abrasive material or to collect ablated tissue or other biomolecules.

The Applicants respectfully submit that *Unger et al.* disclose a device and method for delivery of drug by creating channels or pores across a biological membrane and applying a driving force to propel the drug across the membrane.

There is however no recitation of a container which collects ablated tissue or other biomolecule.

The Applicants have amended claim 1 to recite "a container operably connected distally to the device having an opening therethrough adapted to deliver an abrasive material therein to the tissue AND to collect ablated tissue or other biomolecule therein from an ablation site on the tissue." Thus the container must clearly be adapted to deliver an abrasive material and collected ablated tissue or other biomolecules.

In order to anticipate a claim, a single reference must recite each and every element of the pending claim. The Applicants respectfully submit that *Unger et al.* do not disclose a device having a container which is connected to the device as recited in the claimed invention. At least in part, the presence of this container demonstrates the novelty of the claimed invention as it shows the wholly different approaches to delivering drugs. The device of *Unger et al.* utilize sonic energy to create pores in the skin membrane to increase its permeability to drugs and does not create any waste products. By contrast, the claimed invention ablates tissue by the lateral movement of the abrasive material. Thus the container has the crucial task of collecting the ablated material and removing it from the treatment area.

In view of the claim amendment, the Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. §102 be removed. The Applicants believe that claim 1 is now in condition for allowance.

#### The 35 U.S.C. §103 rejection

Claims 34-37 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Unger et al.* in view of *Avrhami et al.* (US 2003/0212397). The Applicants respectfully traverse this rejection.

The Examiner states that while *Unger et al.* do not explicitly disclose monitoring feedback using an electrical property, *Avrhami et al.* teach, in paragraphs 0070, 0121, 0124-0125 and 0173, monitoring feedback using a heartbeat to perform

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safe ablation procedure. The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of *Avrhami et al.* in the device of Unger et al. to increase the safety of the ablation procedure for better patient outcome. The Applicants respectfully disagree.

The Applicants submit that *Avrhami et al.* disclose a device for facilitating transdermal passage of a substance through skin on the body. In a particular embodiment, the device includes an electrode and a control unit. Furthermore, the device is adapted to drive the electrode to apply to the skin a current capable of ablating stratum corneum epidermis of the skin, so as to facilitate transdermal passage of the substance.

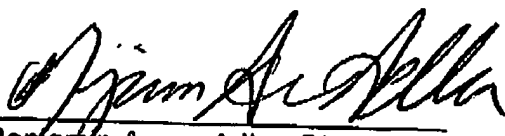
In order for an obvious rejection to be valid, the combined references must explicitly teach each and every element on the claimed invention. The Applicants respectfully submit that Unger et al. do not recite the crucial element of claim 1 as discussed supra. Thus claim 1 is novel and non-obvious. Furthermore, all claims which depend on claim 1 are also novel and non-obvious.

In view of the claim amendment, the Applicants respectfully request that the rejection of claims 34-37 under 35 U.S.C. §103 be removed. The Applicants believe that the claims are now in condition for allowance.

This is intended to be a complete response to the Office Action, mailed February 10, 2009. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution.

Respectfully submitted,

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